

REMARKS

Applicant submits this Reply to the Office Action mailed August 28, 2006. By this Reply, Applicant has amended claims 1, 2, 4, 7, 11, 12, 16, 17, and 33 and canceled claim 10. Accordingly, claims 1-9 and 11-33 are pending in this application. The originally-filed application fully supports the subject matter of amended claims 1, 2, 4, 7, 11, 12, 16, 17, and 33. Thus, the requested claim amendments do not introduce new matter.

In the Office Action, claims 2-4 and 7-17 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically the Office Action states that "[i]n claim 2 line 8-9 'said actuatable hydraulic control being adapted to generate a control signal indicative of a desired flow rate' is wrong." Office Action at page 2. Applicant has appropriately amended claim 2. The Office Action further states that "[i]n claim 7 line 2 --device-- should be added after 'switching'." *Id.* Applicant has amended claim 7 as suggested by the Examiner. The Office Action also states that "[i]n claim 10 line 2 'a neutral position' of the on-off valve appears to be the same as the 'non activated condition' of the first switching device of claim 8 line 5." *Id.* Applicants have canceled claim 10. The Office Action further states that "[i]n claim 12 line 3 'on' should be --one--." *Id.* Applicant has amended claim 12 as suggested by the Examiner. The Office Action also states that "[i]n claim 16 line 2 and claim 17 line 2 and 4 'said directional distributor valve' is confusing." *Id.* Applicant has appropriately amended claims 16 and 17. In view of this, Applicant respectfully requests withdrawal of the 35 U.S.C. § 112, second paragraph, rejections.

In the Office Action, claims 1, 4, 27-29 and 30-32 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4, 6, 32-34 of U.S. Patent No. 7,003,948 ("the '948 patent"); and claims 1, 15-17, 18-26, and 30-32 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 17, 18-26, and 27-29 of the '948 patent in view of German Patent No. 4405472 ("DE '472"). Applicant is filing a terminal disclaimer with this Reply to overcome the obviousness-type double patenting rejection.

In the Office Action, claims 2 and 3, 5, 6, 7-14, and 33 were rejected under 35 U.S.C. § 101 based on a statutory type double patenting rejection. Office Action at page 4. Specifically, the Office Action states that claims 2 and 3, 5, 6, 7-14 and 33 claim the same invention as that of claims 4, 5, 6, 10-17, and 34 of the '948 patent. Applicant has amended independent claim 1, from which claims 2, 3, 5, 6, and 7-14 depend. Applicant has also amended claim 33. Applicant submits that claims 2 and 3, 5, 6, 7-14 and 33 do not claim the same invention as claims 4, 5, 6, 10-17, and 34 of the '948 patent. Accordingly, Applicant requests withdrawal of the 35 U.S.C. § 101 rejection.

In the Office Action, claims 1, 5-7, and 27-29 were under 35 U.S.C. § 102(b) as being anticipated by DE '472; and claims 2 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over DE '472 in view of U.S. Patent No. 3,997,017 to Campbell et al. ("Campbell"), U.S. Patent No. 3,788,075 to Holdeman et al. ("Holdeman"), and U.S. Patent No. 3,458,005 to Malm et al. ("Malm"). Applicant respectfully traverses these rejections for the reasons provided below.

Applicant submits that DE '472 cannot anticipate claims 1, 5-7, and 27-29 because DE '472 does not disclose each and every element of claims 1, 5-7, and 27-29. Prior art anticipates a claim only if each and every element as set forth in the claim is found described in the prior art. M.P.E.P. § 2131.

With respect to independent claim 1, DE '472 fails to disclose, among other things, "an actuatable hydraulic control having an actuated condition in which the actuatable hydraulic control generates a hydraulic control fluid having a control pressure which is adjustable between a first control pressure and a second control pressure; the actuatable hydraulic control having at least one control output associated with a mode of operation of the hydraulic transmission system," as recited in independent claim 1. DE '472 discloses that "[t]he control has a work pump (300) in the open circuit for the movement and excavator operation. Next to the pump is provided an independent rotary mechanism pump (400) in a closed circuit for rotary mechanism drive." DE '472 Abstract, Figs. 2 and 3. Indeed, although the Office Action rejects claim 1 under 35 U.S.C. 102(b), the Office Action does not show what disclosure in DE '472 discloses each and every element of claim 1. For example, the Office Action does not show where the above recitation of claim 1 is disclosed in DE '472. It appears that nowhere does DE '472 disclose or suggest the above recitation of claim 1. Accordingly Applicant requests withdrawal of the 35 U.S.C. 102(b) rejection of claim 1 and its dependent claims 5-7.

With respect to independent claim 27, Applicant again submits that DE '472 fails to disclose each and every element of the claim. For example, it appears DE '472 fails to disclose, among other things, "providing a hydraulic control fluid having a control pressure which is adjustable between a first control pressure and a second control

pressure, said control pressure being indicative of a desired flow rate of the hydraulic working fluid," as required by independent claim 27. The Office Action provides no guidance as to how the Examiner is viewing DE '472 as teaching this claimed feature. Accordingly, Applicant requests withdrawal of the 35 U.S.C. 102(b) rejection of claim 27 and its dependent claims 28 and 29.

Regarding the rejection of claims 2 and 30 under 35 U.S.C. § 103(a) as being unpatentable over DE '472 in view of Campbell, Holdeman, and Malm, Applicant submits that DE '472 either alone or in combination with Campbell, Holdeman, and Malm does not disclose each and every element of claims 2 and 30. Thus, a combination of DE '472, Campbell, Holdeman, and Malm cannot present a *prima facie* case of obviousness because a *prima facie* case of obviousness requires, *inter alia*, that the prior art references, when combined, must teach or suggest every aspect of the claims. M.P.E.P. § 2143. As noted above, DE '472 fails to disclose "an actuatable hydraulic control having an actuated condition in which the actuatable hydraulic control generates a hydraulic control fluid having a control pressure which is adjustable between a first control pressure and a second control pressure; the actuatable hydraulic control having at least one control output associated with a mode of operation of the hydraulic transmission system," as recited in independent claim 1. DE '472 also fails to disclose "providing a hydraulic control fluid having a control pressure which is adjustable between a first control pressure and a second control pressure, said control pressure being indicative of a desired flow rate of the hydraulic working fluid," as recited by claim 27.

Neither Campbell, Holdeman, nor Malm cure these deficiencies of DE '472. Campbell discloses that "[a] vehicle such as a motor grader includes a hydrostatic

auxilliary front wheel drive system which utilizes implement system pressurized fluid flow to drive a pair of fixed displacement hydraulic motors.” Campbell, Abstract.

Holdeman discloses “[a] pressurized equalizer valve and reversible flow logic system [] provided for reversible fluid motors that are connected in series.” Holdeman, Abstract.

Malm disclose “an auxiliary hydrostatic front wheel drive system for a tractor having a conventional transmission for driving its rearward drive wheels.” Malm, col. 1, ll. 29-31.

None of Campbell, Holdeman or Malm disclose or suggest the above noted recitations of independent claims 1 and 27. In fact, the Office Action does not contend otherwise.

Additionally, Claim 2 depends from claim 1 and is therefore allowable for at least the same reasons that claim 1 is allowable. Claim 30 depends from claim 27 and is

allowable for at least the same reasons that claim 27 is allowable. Accordingly

Applicant requests withdrawal of the 35 U.S.C. § 103(a) rejection of claims 2 and 30.

In view of the foregoing remarks, Applicant submits that the claimed invention is not anticipated or rendered obvious by the prior art references cited against this application. Applicant therefore requests withdrawal of the rejections and timely allowance of all pending claims.

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

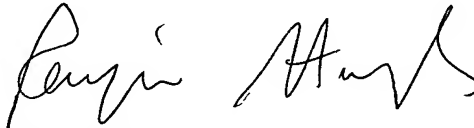
In discussing the specification, claims, and drawings in this Reply, it is to be understood that Applicant is in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification or abstract and/or shown in the drawings. Rather, Applicant is entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 28, 2007

By: 
Panyin A. Hughes
Reg. No. 55,288